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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,691	11/18/2003	Timothy W. Girdalin	8591-112	6613
36412	7590	06/15/2005	EXAMINER	
DUCKOR SPRADLING METZGER			HESS, DANIEL A	
401 WEST A STREET, SUITE 2400			ART UNIT	
SAN DIEGO, CA 92101-7915			PAPER NUMBER	
			2876	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/716,691	GIRALDIN ET AL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Daniel A. Hess	2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-18 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This action is in response to applicant's amendment and arguments made 4/1/2005, which have been placed in the file of record.

#### *Response to Arguments and Amendment*

Applicant's arguments filed 4/1/05 have been fully considered but they are not persuasive.

The examiner agrees with the arguments made by the applicant that the claims *as amended* are sufficient to overcome rejection under 35 USC 102. Hence a new rejection is made herein.

However the examiner disagrees with the applicant's further arguments, made on page 9 of the 4/1 response, that Howington teaches away from continuous monitoring and creation of continuous movement reports. The applicant has argued:

As can be further verified from a review of these cited portions of Howington, there is no teaching or disclosure of "creating reports on the demographics and continuous movements of the guests." Howington merely discloses the use of magnetic swipe cards or the like for identifying a patron at a particular location, such as a gaming machine, casino attraction, restaurant, or other location where they might make a transaction with their card. This information, at best, could provide reports showing a chronological listing of the locations the patron visited using their card, but would not be able to show the actual movement between these locations or any locations they visited without using their card. In fact, Howington appears to teach away from this element, because each of the reports described in the specification are focused on gaming machine performance, not the movement of the patron. Therefore, Howington does not disclose "creating reports on the demographics and continuous movements of the guests".

The examiner does not believe that Howington teaches away from continuous monitoring. See MPEP 2123: “Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments.”

By adding continuous monitoring to the capability of Howington, Howington would not be hurt, but rather enhanced. Howington clearly conveys that his invention is intended to, in addition to tracking wagering, also monitor “that patron's other activities related to arriving at, enjoying and departing from the casino” [0036]. There is the intent to collect “a wide variety of data including tracking patrons throughout the casino and any attached resort attractions, tracking gaming, credit restaurant, recreational and retail transactions” [0022]. Further, “knowledge and analysis concerning such data is obviously desirable for club member and non-club member patrons for targeted marketing efforts and for improving customer service” [0023].

*Detailed and continuous data on a patron's movements in the setting Howington envisions could clearly be mined to further Howington's stated goals of improving customer service and targeted marketing. For example, if a person lingers in a particular line for a long time, this is a clear area to improve customer service. If a particular demographic group gravitates to a particular part of the casino, this would be ideal for targeted marketing.*

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-18 rejected under 35 U.S.C. 103(a) as being unpatentable over Howington (US PG Pub No. 2002/0152120) in view of LaDue (US 5,889,474).

Re claims 1: (claim language is underlined; following that are portions of Howington that are relevant)

A method of communication for a confined area of a facility, comprising:

receiving personal identification information of a guest into at least one of a set of stations distributed throughout the confined area;

Howington teaches:

[0036] "As mentioned earlier, many casinos also employ data gathering techniques (e.g., magnetic swipe cards at each machine) for identifying a patron and associated personal information"

receiving demographic information regarding the registered guest;

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monitoring movement of the guest over time within the confined area;

storing guest movement information;

Howington teaches:

[0036] “associated personal information, *the patron's location within the casino*, that patron's wagering characteristics, that patron's affiliation with other groups or patrons, promotional items or comps related to the patron, and that patron's other activities related to arriving at, enjoying and departing from the casino. Embodiments of the present invention contemplate sharing of the patron related information with the machine management database information described earlier. The sharing of this information allows scores for and evaluations of games and players. Game and player-related relationships may also be compared on any basis such as game type, denomination, location, group, *age, sex, status, and club level*”

[0022] “Patron information includes a wide variety of data including *tracking patrons throughout the casino and any attached resort attractions*, tracking gaming, credit restaurant, recreational and retail transactions”

and creating reports on the demographics and movements of the guest.

The collection of data described in paragraphs [0022] and [0036] can broadly be described as a report on a patron/guest since the term report is a broad term and can mean an organized grouping of data.

Note also that (entire document) the positions of individual gambling locations are known in the system, and thus tracking a user's use of such systems allows tracking the user's physical movements.

Howington fails to teach or fairly suggest continuous monitoring. Rather, Howington's monitoring occurs at individual stations, check-in points, and the like.

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LaDue teaches (entire document; column 3, lines 45-55 is merely exemplary) continuous monitoring of a person's movements in a particular area. Although LaDue's system is associated with custodial monitoring, it could be applied to position monitoring generally.

In view of LaDue's teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known continuous tracking of an individual's position as demonstrated by LaDue (and many other systems) in the teachings of Howington because detailed and continuous data on a patron's movements in the setting Howington envisions could clearly be mined to further Howington's stated goals of improving customer service and targeted marketing. For example, if a person lingers in a particular line for a long time, this is a clear area to improve customer service. If a particular demographic group gravitates to a particular part of the casino, this would be ideal for targeted marketing.

Re claim 2:

A method according to claim 1, further including storing information relating to the cashless spending history of the guest at various stations throughout the confined area.

[0022]: "tracking gaming, credit restaurant, recreational and retail transactions"

[0023]: "...the present invention also tracks and manages data related to patron hotel transactions and preferences; restaurant purchases, point and comp redemption; retail purchases; and information relating to recreational activities that patrons undertake, such as golf outings, spas, movies and the like."

[0036]: "patron's wagering characteristics"

Re claim 3:

determining spending habits of the guest in response to the stored cashless spending history

[0023]: “Knowledge and analysis concerning such data is obviously desirable for club member and non-club member patrons for targeted marketing efforts and for improving customer service. For this reason, the system of the present invention also tracks and manages data related to patron hotel transactions and preferences; restaurant purchases, point and comp redemption; retail purchases; and information relating to recreational activities that patrons undertake, such as golf outings, spas, movies and the like.”

Re claim 4:

sorting information relating to habits of the guest while using the facility as to the demographic information of the guest.

[0036]: “Game and player-related relationships may also be compared on any basis such as game type, denomination, location, group, age, sex, status, and club level.”

Re claim 5:

further including storing attraction reservations entered by the guest

[0023]: “tracks and manages data related to patron hotel transactions and preferences; restaurant purchases”

Re claim 6: The collection of data described in paragraphs [0022] and [0036] can broadly be described as a report on a patron/guest since the term report is a broad term and can mean an organized grouping of data.

Re claims 7, 13: See discussion re claim 1 above. Note in particular that the method described by Howington is also a system, and further note that the system is almost certainly run by software.

Re claims 8, 14: See discussion re claim 2, above.

Re claims 9, 15: See discussion re claim 3, above.

Re claims 10, 16: See discussion re claim 4, above.

Re claim 11, 17: See discussion re claim 5, above.



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Re claim 12, 18: See discussion re claim 6, above.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A. Hess whose telephone number is (571) 272-2392. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
DH  
6/4/05

  
**DANIEL STCYR**  
**PRIMARY EXAMINER**